

**REMARKS**

Reconsideration of the present application in view of the above amendments and the following remarks is respectfully requested.

**I. STATUS OF THE CLAIMS**

Claims 20 - 48 are presently pending and under consideration. Claims 1-19 were previously cancelled, without prejudice. No claims are amended. No claims are cancelled.

New claims 39 – 48 are added. New claims 39, 42 – 45, and 47 - 48 are supported throughout the present specification, including in the original claims as filed and at page 8, penultimate paragraph. New claim 40 finds support at the bottom of page 2 and the beginning of line 3 in the present specification. New claim 41 finds support in the first full sentence of page 5. New claim 46 is supported in the present specification in the last sentence before the “summary of the invention” and in the last sentence of the paragraph bridging pages 2 and 3.

Applicants reserve the right to file a continuation or divisional application on any non-pursued subject matter.

**II. DOUBLE PATENTING REJECTIONS**

Claims 20 – 31, and 36 - 38 have been rejected on the ground of non-statutory obviousness-type double patenting as allegedly being unpatentable over at least one of US 6,291,555 (Surjan ‘555), US 6,403,678 (Surjan ‘678), and US 6,420,458 (Surjan ‘458) in view of US 6,166,849 (Coleman) and US 5,681,128 (Morgan). In addition, claims 32 – 35 have been rejected on the ground of non-statutory obviousness-type double patenting as allegedly being unpatentable over US 6,645,340 (Gienau) and US 5,962,602 (Harman).

Although not necessarily agreeing with the Office’s conclusions, applicants will consider filing terminal disclaimers directed to the abovementioned patents if the claimed

subject matter is otherwise allowable. Such terminal disclaimers will render these obviousness-type double patenting rejections moot.

### **III. OBVIOUSNESS REJECTIONS**

Claims 20 – 31, and 36 - 38 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Surjan ‘555, Surjan ‘678, Surjan ‘458, and US 6,402,434 (Surjan ‘434), and US 6,416,246 (Surjan ‘246), in view of Coleman and Morgan.

Claims 32 – 35 have been rejected under under 35 U.S.C. § 103(a) as allegedly being unpatentable over the abovementioned references further in view of Gienau and Hartman.

Claims 20-31 and 36-38 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Coleman et al., Morgan et al., Gienau et al., Hartman et al., European Patent No. 488,949, Toussaint et al., U.S. Patent No. 4,623,702 (“Grieves et al.”), and Japanese Patent No. 2000-273354.

### **IV. REJECTIONS UNDER 35 U.S.C. § 103(c)**

In Applicant’s response filed on March 22, 2010, it states:

“...the present application is “subject matter developed by another” because, while the inventor Jim Sarjun is listed as a co-inventor of each of the above-referenced patents, the inventive entity is different because not all inventors are the same (i.e., the co-inventors of the cited patents are not co-inventors of the present application). Additionally, the above-mentioned Sarjun et al. patents qualify as art under 35 U.S.C. § 102(e), as acknowledged by the Examiner in the Office Action dated April 2, 2007....

The Examiner has rejected this argument allegedly not establishing common ownership of the claimed subject matter at the time the invention was made as required in MPEP § 706.02(I) II Evidence Required to Establish Common Ownership. Examiner also alleges that Surjan et al. Patent No. 6,291,555 qualifies as prior art under 35 U.S.C. 102(a)/103(a) since the patent date of September 18, 2001 antedates the effective filing date of the instant application of December 28, 2001.

Applicants respectfully submit that they are capable of producing the necessary evidence, according to the requirements of MPEP § 706.02, to establish common ownership, and that this evidence will overcome the obviousness rejections based upon any of the Surjan et al patents. Accordingly, applicants are in the process of compiling this evidence and will submit same to the Examiner when there is an indication that the remaining rejections, which are addressed below, have been overcome.

In addition to the rejections based upon the Surjan et al patents, the Examiner has also rejected claims 20 – 31 and 36 – 38 under 35 USC 103 (a) as being unpatentable over Coleman et al., Morgan et al., Gienau et al, Hartman et al, European Patent No. 488, 949; the Toussaint et article, Greives et al. Patent 4,623,702 and Japanese Patent No. 2000-273354. Applicants respectfully traverse the rejection based upon these references.

Applicants respectfully submit that the Examiner's rejections cannot be properly sustained. Applicants respectfully submit that none of the references cited by the Examiner as suggesting the use of a curing agent comprising a combination of tertiary amines and aliphatic amines in fact contain such a suggestion. By way of example, the Examiner in the outstanding office action has indicated that the rejection of the claims on this basis "is maintained for the reasons of record set forth in previous office actions." In

the immediately preceding office action dated September 22, 2009, the Examiner does not specifically identify any references which disclose or suggest the use of tertiary amine in combination with aliphatic amine as required by the present claims. Instead, this office action refers to the previous office action mailed February 11, 2009, in which the Examiner states in paragraph 7 thereof “It would have been obvious to add a tertiary amine such as the 2,4,6-tri(dimethylaminomethyl) phenol of Hartman to the compositions of Coleman et al. and Morgan et al in order to increase the cure rate.”

Applicants respectfully submit, however, that this rejection can only be based upon a hindsight reconstruction using the claims of the present application as a template. As described in the present application, it has been a common practice in the prior art to use thiol containing compounds in order to achieve an increase in reaction rate, even at low temperatures. The background of the present application indicates that such was not generally believed to be possible using amine-based curing agents. Thus, the present application defines adhesive compositions that are capable of achieving cure rates of less than two hours (see claim 40) while at the same time being substantially free of thiol compounds (see claim 46). Applicants respectfully submit that there is simply nothing in the prior art that would suggest the ability to achieve such a result. The only suggestion to make a selection from the literally thousands of possible combinations of epoxies and curing agents to arrive at the presently claimed compositions is found in the present specification. Furthermore, there is certainly nothing in any of the prior art to suggest the specific combinations of aliphatic amines and tertiary amines having the specified properties in the claims (see, for example, claim 39 and the requirement of certain glass

transition temperatures for the aliphatic amines while also requiring specific amine values for the tertiary amine).

## **V. FURTHER REJECTIONS**

The Examiner has rejected Applicant's previous argument that the Rule 132 Declaration filed on August 11, 2009, demonstrates that curable adhesives of the claimed invention unexpectedly have a higher and more consistent anchor pullout strength compared to prior art anchors. The Examiner alleges that the data set forth in the Rule 132 Declaration is allegedly not commensurate in scope with the subject matter claimed.

The Examiner also alleges that the claim curing agent is broadly defined and that the testing of a single epoxy:amine weight ratio does not confirm the criticality of the extreme claimed parameters.

Although applicants do not necessarily agree with the examiner's assessment of the scope of the unexpected results established by the previously presented data, applicants are in the process of evaluating the possibility of developing yet further data to demonstrate the unexpected results of the present invention.

## **IV. CONCLUSION**

In view of the above, applicants respectfully submit that the present claims define subject matter which is both novel and patently obvious. .

The Commissioner is hereby authorized to charge any additional fees that have not been paid to Deposit Account No. 50-1943.

Respectfully submitted,

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